

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3767 of 1999

with

Civil Application No. 4851 of 1999

and

Civil Application No.6227 of 1999

with

SPECIAL CIVIL APPLICATION No 3778 of 1999

and

Special Civil Application No. 9036 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

-----  
MOHANBHAI MULJIBHAI PATEL          REPRES OF PANIYA SEVA SAHAKARI

Versus

G S TRIVEDI/ DY DIRECTOR          AGRI PRODUCE & RURAL FINANCE

-----  
Appearance:

Special Civil Application Nos. 3767 & 3778 of 1999

Mr. B.M. Mangukia, advocate for petitioners in both petitions.

Special Civil Application No. 9036 of 1999

Mr. P.J. Kanabar, advocate for petitioners.

Mrs. Manisha Lavkumar, A.G.P. for respondent - Government authorities.

Mr. Jayant Patel, learned advocate for A.P.M.C.

-----

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 30/12/1999

#### COMMON ORAL JUDGEMENT

1. Special Civil Application No. 3767 of 1999 has been filed with a prayer to issue a writ of mandamus or in the nature of mandamus or any other appropriate writ, order or direction and restrain the respondents from removing the names of the petitioners and the names of the members of the executive committees of the societies represented by the petitioners as stated in the title cause from the list of voters of the Agriculturists and Traders Constituencies of the Committee and be pleased to restrain the respondents from restraining the petitioners and the members of the executive committees of the societies the petitioners represent as mentioned in the title cause from contesting and voting in the elections of the Market Committee conducted by the respondents Nos.1 and 2 as per the scheduled programme or amended, as may be the case.

2. It may be appreciated that the petitioner by filing Civil Application No. 6227 of 1999 in Special Civil Application No.3767 of 1999 has challenged the action of the authority to permit voting by the Government Nominee who came to be appointed after finalization of the voters' list by the authorized officer and under the orders of this Court (Coram: M.R. Calla, J.) dated 1.7.1999 counting of the votes were stayed qua agriculturists constituencies.

3. Special Civil Application No. 3778 of 1999 has been filed for the relief of issuance of a writ of mandamus or in the nature of mandamus or any other appropriate writ order or direction and direct that the names of the petitioners and the names of the members of the executive committee of the cooperative societies represented by the petitioners be included in the list of voters and be pleased to quash and set aside the orders passed by the respondent No.2 dated May 10, 1999 at Annexure -G to the petition.

4. Special Civil Application No. 9036 of 1999 has been moved by the petitioners who are elected members of the Traders Constituency of the Market Committee for the relief to issue a writ of mandamus or any other

appropriate writ, order or direction, by quashing and setting aside the inaction on the part of the respondents of not publishing the names of the petitioners in the Official Gazette as elected members of respondent No.2 as per Annexure D to the petition and to issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to constitute a Committee of the petitioners and other nominated members to be nominated by respondent No.1 and the local authority of Amreli to administer and manage respondent No.2 Institution.

5. Today all the matters have been placed for hearing before this Court. Learned advocate Mr. Mangukia for the petitioners in Special Civil Application No. 3767 of 1999 and 3778 of 1999 whereas Mr. P.J. Kanabar, learned advocate for the petitioners in Special Civil Application No. 9036 of 1999 are present. Mrs. Manisha Lavkumar learned A.G.P. for State of Gujarat and other Government officers is present whereas learned advocate Mr. Jayant Patel is present for Agricultural Produce Market Committee ('APMC' for short) in all the petitions.

6. Having heard learned advocates appearing for the parties and having perusal of the averments made in the petitions as well as in the affidavits in reply and considering the facts and circumstances of the group of the above petitions, since in the voters list the names of certain persons who were appointed as Government nominees were not there, challenge was made and stay was granted by this Court against counting. So far as other grounds of challenging the voters list are concerned, Mr. Mangukia fairly concedes the above and even on merits the challenge that either the voters list was not properly prepared or names of certain persons were rightly included or excluded are not to be entertained because if they have any grievances, the proper remedy is election petition under Rule 28 of the The Gujarat Agricultural Produce Markets Rules, 1965. Mr. Mangukia for the petitioners does not press the allegations made against Mr. Trivedi, the District Registrar in these proceedings.

7. As regards election of APMC Amreli is concerned, it has taken place. Therefore, considering the facts and circumstances of the case, it is directed that by excluding the votes of Government nominee, whose names were not included in final voters list, the counting shall be made and the result shall be declared positively within 15 days from the service of the writ of this judgment. Hence Special Civil Application No. 3767 of

1999 with Special Civil Application No. 3778 of 1999 with both the civil applications shall stand disposed of accordingly. Special Civil Application No. 9036 of 1999 shall also stand disposed of in view of the aforesaid direction.

8. Since result of election of all constituencies is ordered to be declared or declared, no further orders are required to be passed in this group of petitions. However, until the newly elected body assumes office, status quo as on today shall be maintained during the aforesaid interregnum period.

9. In the result, all the petitions are disposed of subject to the above directions. Rule issued in Special Civil Application Nos. 3767 of 1999 and 3778 of 1999 is made absolute to the aforesaid extent and notice in Special Civil Application No. 9036 of 1999 is discharged, with no order as to costs.

10. Notice issued in civil applications shall stand discharged with no order as to costs. Subject to the directions issued above, intrim relief granted earlier in the civil applications shall stand vacated.

11. Direct service is permitted.

-----

(karan)